

Message Text

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DRAFTED BY L/M/SCA - H. F. SHAMWELL, JR.

APPROVED BY EB/OA/AVP - DAVID ORTMAN

L/M/SCA - MR. MALMBORG

S/CPR - MR. DAVIS

EUR/CAN - MR. BROWN

CUSTOMS - MR. SEIDEL

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FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA

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TAGS: ETRN, CA

SUBJECT: CIVAIR: PRECLEARANCE AGREEMENT-PRIVILEGES
AND IMMUNITIES

REFS: (A) OTTAWA 1177; (B) STATE 81240; (C) OTTAWA 1377;
(D) OTTAWA 1177 (E) 1351

1. REF A REFERRED TO DISCUSSIONS BETWEEN EMBASSY AND GOC
LEGAL OFFICERS ON QUESTION OF PRIVILEGES AND IMMUNITIES
(P&I) FOR PRECLEARANCE OFFICES AND PERSONNEL. RESULTS OF
THAT MEETING LEAVE DEPARTMENT LESS THAN OPTIMISTIC. DEPART-
MENT FEELS THAT PROPOSAL TO TREAT PRECLEARANCE STAFF AS
CONSULAR EMPLOYEES IS MOST SENSIBLE AND REASONABLE APPROACH,
MOST LIKELY TO RESULT IN A RAPID SOLUTION TO PROBLEM.
ISSUES RAISED BY GOC MOVE SIDES FARTHER APART ON ISSUES
WHICH SEEMINGLY SHOULD NOT PROVIDE ANY PARTICULAR COMPLICA-
TIONS.

2. AS EMBASSY RIGHTLY STATED, GOC ABSOLUTIST VIEW OF
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SOVEREIGN IMMUNITY, WHICH IS BROAD ENOUGH TO GUARANTEE

INVIOABILITY FOR FILES AND EQUIPMENT OF ANY USG OFFICE IN CANADA, IS NOT SHARED BY USG. WHILE USG HAS NO OBJECTION TO GOC'S ADOPTION OF THIS INTERPRETATION FOR PURPOSE OF ASSURING PROTECTION OF OUR EQUIPMENT AND FILES AND THEREBY SATISFYING OUR BASIC OBJECTIVE IN THIS AREA, USG WOULD NOT WANT TO BE PUT IN POSITION OF HAVING TO SUPPORT A THEORY WHICH IT DOES NOT SHARE SHOULD SOME SPECIFIC DISPUTE ARISE IN THE FUTURE. SIMILARLY, USG DOES NOT OBJECT TO GOC RECOGNIZING OFFICIAL ACTS IMMUNITY FOR PRECLEARANCE OFFICERS ON BASIS OF ITS INTERPRETATION OF INTERNATIONAL LAW OR PRACTICE, OR THROUGH AN INTERPRETATION OF ITS OWN DOMESTIC LEGISLATION; HOWEVER, AGAIN, USG DOES NOT WANT TO BE BOUND BY GOC THEORIES IN DEFENDING ANY ACT OF ONE OF ITS AGENTS. AT A MINIMUM USG WOULD REQUIRE FIRM COMMITMENT FROM GOC ON FUNDAMENTAL ISSUE -- I.E., GUARANTEE OF IMMUNITY AND INVIOABILITY -- WITHOUT NECESSITY OF POSITIVE ACTION ON PART OF USG REQUIRING RELIANCE UPON GOC'S INTERPRETATIONS OF APPLICABLE LEGAL PRINCIPLES.

3. EMBASSY AGAIN URGED TO IMPRESS UPON GOC DESIRABILITY OF RECOGNIZING PRECLEARANCE OFFICERS AND OFFICES AS PART OF EXISTING CONSULAR ESTABLISHMENTS, THEREBY FACILITATING EXTENSION OF CONSULAR PRIVILEGES AND IMMUNITIES WITHOUT THE NECESSITY OF ADDITIONAL LEGISLATIVE ACTION ON EITHER SIDE. WOULD BE UNWISE FOR EACH SIDE TO ADOPT DIFFERENT THEORY CONCERNING THE BASIS UPON WHICH RUDIMENTARY P&I ARE TO BE EXTENDED. FOR EXAMPLE, USG COULD EXTEND P&I TO CANADIAN PRECLEARANCE OFFICES AS PART OF GOC CONSULAR ESTABLISHMENTS IN US, BUT WOULD NOT BE PREPARED TO DO SO WITHOUT CONCURRENCE BY GOC THAT THESE OFFICES ARE IN FACT PERFORMING CONSULAR FUNCTIONS FOR THE GOC, THUS ENTITLING THEM TO ENJOYMENT OF CONSULAR P&I.

4. THE CONCLUSION IS INESCAPABLE, THEREFORE, THAT SOME COMMON GROUND MUST BE FOUND. ABSENT THIS COMMON GROUND, EITHER DOMESTIC LEGISLATION WOULD BE REQUIRED (ON EITHER OR BOTH SIDES) OR AGREEMENT MUST BE CONCLUDED IN THE FORM OF A TREATY REQUIRING US SENATE ADVICE AND CONSENT AND SIMILAR ACTION ON THE GOC SIDE. RUSH

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